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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

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| THE PEOPLE,<br>Plaintiff and Respondent,<br>v.<br>MICHAEL DAVID WOODY,<br>Defendant and Appellant. | A130848<br><br>(Humboldt County<br>Super. Ct. No. CR094392) |

Following the denial of defendant's motion to suppress evidence seized from his vehicle, he was tried by a jury and convicted of two counts of transportation of a controlled substance (Health & Saf. Code, § 11352, subd. (a)), and resisting or obstructing a peace officer (Pen. Code, § 148, subd. (a)(1)). In this appeal he renews his challenge to the warrantless search. We conclude that the search was lawful, and affirm the judgment.

## STATEMENT OF FACTS[1]

In September of 2009, Officer Justin Braud of the Eureka Police Department received information from a confidential informant that a "middle-aged male subject that went by the name Woody was selling heroin in Eureka." The car driven by "Woody" was described by the informant as "a Jeep Cherokee that was like forest service green in color."

[1] Our recitation of the facts is taken from the hearing on defendant's motion to suppress evidence, which was heard on August 11, 2010.

Thereafter, on September 7, 2009, as Officer Braud was driving his marked patrol vehicle westbound on Third Street in Eureka, he was passed by a "Jeep Cherokee that was a forest service green color." He observed "beads or a necklace or both hanging from the rearview mirror" at least "halfway down the windshield." Due to the length of the beads that "can obstruct view while looking to the center and to the right through the windshield," the officer decided to initiate "an enforcement stop for the observed" Vehicle Code violation. Officer Braud conceded that the vehicle stop was a "pretext" to engage in a "narcotic investigation."

Officer Braud turned his patrol vehicle around and detained the Jeep Cherokee. As he approached the vehicle Officer Braud noticed two occupants seated in the front compartment; defendant was in the driver's seat. The officer contacted defendant and asked for driver's license, registration, and proof of insurance. Defendant verbally identified himself as "Michael Woody." He also produced registration and insurance information, but not a driver's license.[2]

Officer Braud observed that defendant's pupils were abnormally constricted, his facial features were drooping, and his lower arm exhibited "somewhat fresh injection sites." Defendant was also "visibly trembling."

The officer asked if "there were drugs in the car." The passenger, Marvin McQueen, stated that he "had some marijuana on him." Defendant did not respond.

Officer Braud advised defendant and McQueen that he "was going to have them exit the vehicle" to conduct a search for contraband and a driver's license. Defendant said that he would find a driver's license, and turned away from the officer to look behind the center console of the vehicle. Officer Braud told defendant "not to do that," and ordered him to "get out of the vehicle." As the officer opened the driver's door and repeated the admonition to "get out," defendant pulled the door shut, reached forward, and "started the vehicle." Officer Braud drew his taser, pointed it at defendant and

[2] A subsequent "DMV check" revealed that defendant had "a valid driver's license.

"ordered him to turn the vehicle off and exit the vehicle." Defendant responded by turning "the vehicle back on" and driving away.

With Officer Braud "partially in the vehicle," defendant drove forward. The officer deployed his taser in an attempt to incapacitate defendant, but "it did not work." Defendant continued to drive forward. As they neared an intersection, Officer Braud pulled himself out of the Jeep Cherokee and ran back to his patrol vehicle.

Officer Braud pursued defendant with lights and siren activated. The pursuit lasted "approximately a minute," during which defendant failed to yield at stop signs, drove at excessive speed, and made unsafe lane changes. After defendant "finally did yield" and stop his vehicle, the officer arrested him for "felony evading." Braud held defendant and McQueen at gunpoint until other officers arrived.

A search of the interior of defendant's Jeep Cherokee resulted in seizure of suspected black tar heroin and crack cocaine, a digital gram scale, and packaging material for controlled substances. Inside a green canvas bag taken from the vehicle was defendant's driver's license.

## DISCUSSION

Defendant argues that the warrantless investigatory detention of his vehicle was unlawful. He claims that the officer did not have the requisite "objectively reasonable" suspicion to believe he committed a violation of Vehicle Code section 26708, subdivision (a)(2) (section 26708), based on the observation of the beads or necklace hanging from his rearview mirror. Specifically, defendant maintains that Officer Braud failed to articulate a "particularized and objective" basis for his expressed belief that the object hanging from the rearview mirror "obstructed or reduced" the driver's view, as the statute requires.

### *I. The Standard of Review*.

"The standard of appellate review of a trial court's ruling on a motion to suppress evidence is well established. We defer to the trial court's factual findings, express or implied, if supported by substantial evidence, with all presumptions favoring the trial court's exercise of its power to judge the credibility of the witnesses, resolve conflicts in

the testimony, weigh the evidence and draw factual inferences. [Citations.] However, in determining whether on the facts so found the search or seizure was reasonable under the Fourth Amendment, we exercise our independent judgment." (*People v. McHugh* (2004) 119 Cal.App.4th 202, 209.) We defer to the trial court's findings of fact, but measure those facts against federal constitutional standards of reasonableness. (*People v. Miller* (2004) 124 Cal.App.4th 216, 221.) "Further, we examine the legal issues surrounding the potential suppression of evidence derived from a police search and seizure by applying federal constitutional standards." (*People v. Superior Court* (*Walker*) (2006) 143 Cal.App.4th 1183, 1195.)

***II. The Justification for the Vehicle Detention*.**

Familiar standards also govern our examination of the validity of the detention of defendant's vehicle. "Reasonable suspicion of a Vehicle Code violation or other criminal activity justifies a traffic stop; probable cause is not needed." (*People v. Watkins* (2009) 170 Cal.App.4th 1403, 1408.) " '[A]n officer may, consistent with the Fourth Amendment, conduct a brief, investigatory stop when the officer has a reasonable, articulable suspicion that criminal activity is afoot.' [Citation.] ' "Although police officers may not arrest or search a suspect without probable cause and an exception to the warrant requirement, they may temporarily detain a suspect based only on a 'reasonable suspicion' that the suspect has committed or is about to commit a crime. [Citations.] Such detentions are permitted, notwithstanding the Fourth Amendment's requirements of probable cause and a search warrant, because they are 'limited intrusions' that are 'justified by special law enforcement interests.' [Citations.]" [Citation.]' [Citation.] An ordinary traffic stop is treated as an investigatory detention, i.e., a '*Terry* stop.' [Citation.] A *Terry* stop is justified if it is based on at least reasonable suspicion that the individual has violated the Vehicle Code or some other law." (*In re H.M.* (2008) 167 Cal.App.4th 136, 142.)

" 'Reasonable suspicion is a less demanding standard than probable cause and is determined in light of the totality of the circumstances. [Citation.]' [Citation.] ' "A detention is reasonable under the Fourth Amendment when the detaining officer can point

to specific articulable facts that, considered in light of the totality of the circumstances, provide some objective manifestation that the person detained may be involved in criminal activity." ' [Citation.]" (*People v. Lindsey* (2007) 148 Cal.App.4th 1390, 1396; see also *People v. Coulombe* (2000) 86 Cal.App.4th 52, 56.) The burden is on the prosecution to prove by a preponderance of the evidence that the detention and search were justified. (*People v. Ferrer* (2010) 184 Cal.App.4th 873, 882; *People v. Torres* (1992) 6 Cal.App.4th 1324, 1334.)

The detention of defendant's vehicle was based on a perceived violation of section 26708, which provides in subdivision (a)(2) that a "person shall not drive any motor vehicle with any object or material placed, displayed, installed, affixed, or applied in or upon the vehicle that obstructs or reduces the driver's clear view through the windshield or side windows." In evaluating a detention undertaken pursuant to section 26708, the issue is "whether it was objectively reasonable" for the officer to believe the hanging beads "obstructed or reduced" defendant's "clear view through the windshield so as to constitute a possible violation of the Vehicle Code." (*People v. White* (2003) 107 Cal.App.4th 636, 642 (*White*).)

Defendant relies on *White* to challenge the grounds for the detention of his vehicle. In *White*, a police officer observed a car with a tree-shaped air freshener hanging from the rear view mirror, which he believed created an obstruction in violation of section 26708. (*White, supra*, 107 Cal.App.4th 636, 641.) He detained the vehicle and subsequently found marijuana inside the car and trunk. (*Id*. at pp. 640–641.) The officer "never testified that he believed the air freshener obstructed the driver's view," and "never testified to other specific and articulable facts, like hesitant or erratic driving, that might suggest the driver's clear view was impeded." (*Id*. at p. 642.) The defense presented evidence that the air freshener covered less than .05 percent of the total surface of the car's windshield, and did not obstruct the driver's vision. (*Ibid*.) This court concluded "it was not reasonable for the officer to believe that the object he observed may have obstructed or reduced the driver's clear view," and found the detention unlawful. (*Ibid*.)

The present case is factually distinguishable from *White*. Officer Braud described the object as beads and a necklace that "looked to be hanging at least halfway down the windshield." The officer also explicitly testified that he knew the object he observed "can obstruct view while looking to the center and to the right through the windshield."[3] Also, in contrast to *White* "there was no evidence presented by the defense" that the hanging object "did not obstruct the driver's view. (*People v. Colbert* (2007) 157 Cal.App.4th 1068, 1073 (*Colbert.*)

We are persuaded that *Colbert* rather than *White* is dispositive in the present case. In *Colbert* the officer "explicitly testified that the air freshener was 'large enough to obstruct [the driver's] view through the front windshield.' " (157 Cal.App.4th 1068, 1073.) He described the dimensions of the air freshener and related how he had personally experienced the obstruction that an object of that size could pose when he hung a similar-sized object from the rear view mirror of his personal vehicle. The officer also explained that the proximity to the driver's face of an object hanging from the rear view mirror resulted in the object " 'actually obstruct[ing] the view of larger objects such as vehicles or pedestrians' despite the hanging object's small size." (*Ibid*.)

While Officer Braud's testimony was not quite as comprehensive as the officer's testimony in *Colbert*, we find in his depiction of the nature and length of the beads and necklace affixed to the rear view mirror, along with his specific affirmation that he knew from experience the object would create a visual obstruction, the necessary "specific and articulable facts" to support "an objectively reasonable conclusion" that the hanging object "in defendant's vehicle violated Vehicle Code section 26708, subdivision (a)(2)." (*Colbert, supra*, 157 Cal.App.4th 1068, 1073.) Substantial evidence in the record supports the finding that "the officer had reasonable grounds to suspect a Vehicle Code violation." (*People v. Watkins, supra*, 170 Cal.App.4th 1403, 1408.) The vehicle detention was therefore lawful, as was the ensuing search.

Accordingly, the judgment is affirmed.

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[3] Officer Braud did not examine, measure or collect the object after the detention.

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Dondero, J.

We concur:

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Margulies, Acting P. J.

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Banke, J.